

REMARKS

Applicant requests that the above amendments be entered, and that the application be reconsidered in view of these amendments and the following remarks. In the final Office Action, dated December 27, 2004, the Examiner objected to claim 31 as being dependent from a canceled claim. The Examiner further objected to claim 32 as allegedly being in improper dependent form. The Examiner additionally rejected claims 1-4, 7, 11, 12, 23, 24, 29 and 32 under 35 U.S.C. § 102(b) as allegedly being anticipated by U. S. Patent No. 6,371,691 (hereinafter "FINZEL"). The Examiner also rejected claims 6, 13, 28 and 31 under 35 U.S.C. §103(a) as allegedly being unpatentable over FINZEL. Applicant notes with appreciation the Examiner's indication of allowable subject matter in claims 8-10, 25 and 26.

By way of this amendment, Applicant proposes, for the sake of expediting prosecution, amending claim 1 to incorporate the subject matter of claim 8, which the Examiner has indicated as being allowable. Applicant further proposes, for the sake of expediting prosecution, amending claim 23 to incorporate the subject matter of claim 25, which the Examiner has indicated as being allowable. Applicant reserves the right to file a continuation to pursue the subject matter, contained in the claims prior to the present proposed amendment, of claims 1 and/or 23. Applicant further proposes amending claims 9 and 31 to depend from claims 1 and 23, respectively. Applicant additionally proposes amending claim 26 to depend from claim 23, and canceling claims 8 and 25 without prejudice or disclaimer. No new matter has been added by way of the present amendment. Reconsideration of the outstanding rejection of claims 1-4, 6, 7, 11-13, 23, 24, 28, 29, 31 and 32 is respectfully requested in view of the amendments above and the following remarks.

In paragraph 3, the final Office Action objects to claim 31 as being dependent upon a canceled claim. Applicant proposes amending claim 31 to depend from claim 30, as suggested by the Examiner. In view of this change in dependency, Applicant respectfully requests withdrawal of the objection to claim 31.

In paragraph 4, the final Office Action objects to claim 32 under 37 C.F.R. § 1.75(c) as allegedly being in improper dependent form for failing to further limit the subject matter of a previous claim. Claim 32 recites “wherein the first cable is pulled out of, and through, the duct without removing the sealer within the trench.” Independent claim 1 recites “pulling the first cable out of, and through, the duct.” Applicant, therefore, submits that claim 32 further specifies that pulling the cable out of the duct, as recited in claim 1, is performed without removing the sealer within the trench. Claim 32, thus, further defines the subject matter of claim 1, in compliance with 37 C.F.R. § 1.75(c). Withdrawal of this objection is respectfully requested.

In paragraph 7, the final Office Action rejects claims 1-4, 7, 11, 12, 23, 24, 29 and 32 as allegedly being anticipated by FINZEL. Applicant proposes amending claim 1 to incorporate the subject matter of claim 8, which the Examiner has indicated as being allowable. Applicant further proposes amending claim 23 to incorporate the subject matter of claim 25, which the Examiner has indicated as being allowable. Therefore, claims 1 and 23, and dependent claims 2-4, 7, 11, 12, 24, 26, 29 and 32, should be in condition for allowance if this amendment is entered.

In paragraph 9, the final Office Action rejects claims 6, 13, 28 and 31 under 35 U.S.C. §103(a) as allegedly being unpatentable over FINZEL. Claims 6 and 13 depend from claim 1 and, for the same reasons applicable to claim 1 noted above, should also be in condition for

allowance. If this amendment is entered, claims 28 and 31 will depend from claim 23 and, for the same reasons applicable to claim 23 noted above, should also be in condition for allowance.

In view of the foregoing remarks, Applicant respectfully requests that this amendment be entered. Applicant further requests the Examiner's reconsideration and withdrawal of the outstanding rejections, and the timely allowance of this application. Applicant submits that the proposed amendments do not raise new issues or necessitate the undertaking of any additionally search of the art by the Examiner. In fact, this amendment places the present application in immediate condition for allowance. Furthermore, Applicant submits that the entry of this amendment would place the application in better form for appeal in the event that the application is not allowed.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 13-2491 and please credit any excess fees to such deposit account.

Respectfully submitted,



By: _____
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